

ASSEMBLY BILL

No. 438

**Introduced by Assembly Members Maddox and Zettel
(Coauthor: Assembly Member Frusetta)**

February 16, 1999

An act to amend Section 48915 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 438, as introduced, Maddox. Pupils: suspension: expulsion: controlled substances.

Under existing law, the principal or the superintendent of schools is required to recommend the expulsion of a pupil for certain acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance. These acts include unlawful possession of certain controlled substances, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. Under existing law, the principal or superintendent of schools is required to immediately suspend, and to recommend expulsion of, a pupil that he or she determines has committed certain acts at school or at a school activity off school grounds, including unlawfully selling certain controlled substances, and the governing board is required to order a pupil expelled upon the finding that the pupil did commit one of these acts.

This bill would require the principal or the superintendent of schools to recommend the expulsion of a pupil, unless the

principal or superintendent finds that expulsion is inappropriate due to the particular circumstances, for a pupil who is in unlawful possession of any controlled substance listed in specified provisions except for a controlled substance listed as a Schedule I controlled substance or a Schedule II controlled substance in specified provisions. The bill would require the principal or superintendent of schools to immediately suspend, and to recommend expulsion of, a pupil that he or she determines to be in unlawful possession of any Schedule I or Schedule II controlled substance, including possession of not more than one avoirdupois ounce of marijuana. This bill would impose a state-mandated local program by requiring the governing board to conduct a hearing to determine whether the pupil committed the acts and upon that finding to order a pupil expelled.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 48915 of the Education Code is
2 amended to read:
3 48915. (a) Except as provided in subdivisions (c) and
4 (e), the principal or the superintendent of schools shall
5 recommend the expulsion of a pupil, *unless the principal*
6 *or superintendent finds that expulsion is inappropriate*
7 *due to the particular circumstance*, for any of the
8 following acts committed at school or at a school activity
9 off school grounds, ~~unless the principal or superintendent~~

~~finds that expulsion is inappropriate, due to the particular circumstance:~~

(1) Causing serious physical injury to another person, except in self-defense.

(2) Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil.

(3) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for ~~the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis~~ *a controlled substance listed as a Schedule I controlled substance in Section 11054 of the Health and Safety Code or a Schedule II controlled substance in Section 11055 of the Health and Safety Code.*

(4) Robbery or extortion.

(5) Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel shall be based on a finding of one or both of the following:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

(1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a

1 certificated school employee, which is concurred in by
2 the principal or the designee of the principal. This
3 subdivision applies to an act of possessing a firearm only
4 if the possession is verified by an employee of a school
5 district.

6 (2) Brandishing a knife at another person.

7 (3) *Unlawful possession of any controlled substance*
8 *listed as a Schedule I controlled substance in Section*
9 *11054 of the Health and Safety Code or as a Schedule II*
10 *controlled substance in Section 11055 of the Health and*
11 *Safety Code.*

12 (4) Unlawfully selling a controlled substance listed in
13 Chapter 2 (commencing with Section 11053) of Division
14 10 of the Health and Safety Code.

15 ~~(4)~~

16 (5) Committing or attempting to commit a sexual
17 assault as defined in subdivision (n) of Section 48900 or
18 committing a sexual battery as defined in subdivision (n)
19 of Section 48900.

20 (d) The governing board shall order a pupil expelled
21 upon finding that the pupil committed an act listed in
22 subdivision (c), and shall refer that pupil to a program of
23 study that meets all of the following conditions:

24 (1) Is appropriately prepared to accommodate pupils
25 who exhibit discipline problems.

26 (2) Is not provided at a comprehensive middle, junior,
27 or senior high school, or at any elementary school.

28 (3) Is not housed at the schoolsite attended by the
29 pupil at the time of suspension.

30 (e) Upon recommendation by the principal,
31 superintendent of schools, or by a hearing officer or
32 administrative panel appointed pursuant to subdivision
33 (d) of Section 48918, the governing board may order a
34 pupil expelled upon finding that the pupil, at school or at
35 a school activity off of school grounds violated subdivision
36 (f), (g), (h), (i), (j), (k), (l), or (m) of Section 48900, or
37 Section 48900.2 , 48900.3, or 48900.4, and either of the
38 following:

39 (1) That other means of correction are not feasible or
40 have repeatedly failed to bring about proper conduct.

1 (2) That due to the nature of the violation, the
2 presence of the pupil causes a continuing danger to the
3 physical safety of the pupil or others.

4 (f) The governing board shall refer a pupil who has
5 been expelled pursuant to subdivision (b) or (e) to a
6 program of study that meets all of the conditions specified
7 in subdivision (d). Notwithstanding this subdivision, with
8 respect to a pupil expelled pursuant to subdivision (e), if
9 the county superintendent of schools certifies that an
10 alternative program of study is not available at a site away
11 from a comprehensive middle, junior, or senior high
12 school, or an elementary school, and that the only option
13 for placement is at another comprehensive middle,
14 junior, or senior high school, or another elementary
15 school, the pupil may be referred to a program of study
16 that is provided at a comprehensive middle, junior, or
17 senior high school, or at an elementary school.

18 (g) As used in this section, “knife” means any dirk,
19 dagger, or other weapon with a fixed, sharpened blade
20 fitted primarily for stabbing, a weapon with a blade fitted
21 primarily for stabbing, a weapon with a blade longer than
22 3½ inches, a folding knife with a blade that locks into
23 place, or a razor with an unguarded blade.

24 SEC. 2. Notwithstanding Section 17610 of the
25 Government Code, if the Commission on State Mandates
26 determines that this act contains costs mandated by the
27 state, reimbursement to local agencies and school
28 districts for those costs shall be made pursuant to Part 7
29 (commencing with Section 17500) of Division 4 of Title
30 2 of the Government Code. If the statewide cost of the
31 claim for reimbursement does not exceed one million
32 dollars (\$1,000,000), reimbursement shall be made from
33 the State Mandates Claims Fund.